

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SUNAMERICA HOUSING FUND 1050, A
NEVADA LIMITED PARTNERSHIP, a Nevada
limited partnership,

Plaintiff,

v.

PATHWAY OF PONTIAC, INC. et al.,

Defendants.

Case No. 2:19-cv-11783-AJT-MKM

EXHIBIT 5

MAY 7, 2019 EMAIL TO LOCKWOOD WITH ADVICE OF COUNSEL

From: Carnaghi, Brian <BCarnaghi@PVM.org>
Sent: Tuesday, May 7, 2019 11:26 AM
To: Mark Lockwood
Cc: Michael G. Stefanko; Finis, Jerry (JFinis@pathwaytoliving.com)
Subject: FW: Pontiac ILF

Hello Mark. Thanks to Mike for recovering Kevin's notes below. Please consider as you draft your LOI or whatever term you would call your offer. We really appreciate the effort. B

From: Michael G. Stefanko [mailto:mgstefanko@loomislaw.com]
Sent: Tuesday, May 7, 2019 10:25 AM
To: Carnaghi, Brian <BCarnaghi@PVM.org>; Kevin Roragen <kjroragen@loomislaw.com>; Julie Brown <jbbrown@loomislaw.com>
Subject: RE: Pontiac ILF

WARNING: External email. Please verify sender before opening attachments or clicking on links.

Here is the memo from Kevin.

Sincerely,
Julie Brown
Secretary to Michael G. Stefanko, Esq.

From: Kevin Roragen <kjroragen@loomislaw.com>
Sent: Tuesday, April 2, 2019 6:59 PM
To: 'Carnaghi, Brian' <BCarnaghi@PVM.org>; Michael G. Stefanko <mgstefanko@loomislaw.com>
Cc: Finis, Jerry (JFinis@pathwaytoliving.com) <JFinis@pathwaytoliving.com>; Myers, Roger <RMyers@PVM.org>
Subject: RE: OW Bona Fide
Importance: High

*** ATTORNEY CLIENT PRIVILEGED ***

Gentlemen,

I have a concern that this LOI does not meet the standard of a "bona fide offer" to purchase the project. The LOI states that it is non-binding and does not create an enforceable contract. It also states that the parties anticipate executing a further PSA. The Michigan case law on "bona fide offers" in the context of rights of first refusal defines an "offer" as something that manifests a clear intent to enter into a bargain, and which would justify the other party in believing that if they accept, then a legally binding agreement is formed. In other words, it has to be a document which, if accepted, would form a binding agreement between the parties.

The language in this LOI makes it clear that acceptance of the LOI will not result in any binding agreement between the parties. As such, my concern is that it would be vulnerable to attack as not being a "bona fide offer" which triggers the ROFR. In order to clearly constitute a "bona fide offer" I think the purchaser has to submit something which states that acceptance by the Partnership will result in a binding agreement between the parties. That would then trigger the ROFR, which could be exercised, and then the "offer" could be rejected, due to the exercise of the ROFR.

Happy to discuss this further if you wish. I'm in court tomorrow morning, but free in the afternoon.

Kevin J. Roragen

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From: Carnaghi, Brian <BCarnaghi@PVM.org>
Sent: Monday, May 6, 2019 8:25 PM
To: Michael G. Stefanko <mgstefanko@loomislaw.com>
Subject: Pontiac ILF

Hi Mike, can you forward to me Kevin's memo on his observations regarding the 1st LOI. I searched high and low, but cannot locate. He must be traveling or in court the past week. Can you and Kevin do a call next Monday after 10 am ET. We should have 2nd LOI by that time. Thanks, B